

The procedural and factual history surrounding this claim is set forth in great detail in the ALJ's preliminary hearing order dated May 31, 2006 and the Board adopts that statement as its own.

The only issue to be determined in the present appeal is whether the ALJ erred in finding claimant's claim compensable. Specifically, the ALJ concluded claimant sufficiently established that she sustained an accidental injury arising out of and in the course of her employment on November 22, 2005. He further concluded that her prior left knee injury was largely irrelevant as claimant had worked without a knee brace, without a limp, and without significant complaint before the events of November 22, 2005.

Respondent contends the evidence does not support claimant's factual recitation of her accident or her subsequent physical complaints. Simply put, that claimant's accident could not have happened as she described and that other individuals have seen her since the accident acting in a manner inconsistent with someone with a left knee problem.

The ALJ went into great detail summarizing claimant's testimony as well as the deposition testimony of Tracy Macy, Amber Dawn Griffin, Kim Balding and Dr. James Decker. After doing so, he summarized his conclusions as follows:

Here, [c]laimant's injury occurred at work, while she was performing her normal duties and thus occurred in the course of her employment. The injury was suffered either when she was accidentally struck by a resident, or when her shoe caught on a floor mat as she was turning to attend to the needs of a resident. Whether the injury was caused by [c]laimant's interaction with a resident under her care, or as a result of an unfortunate contact between her shoe and a floor mat, the injury arose 'out of the nature, condition, obligations and incidents of the employment.' **Claimant has sustained her burden of proof of personal injury by accident arising out of and in the course of her employment with [r]espondent.**¹

Obviously, the parties are not in agreement as to precisely how claimant's injury occurred. The ALJ clearly weighed the evidence and concluded claimant's injury was compensable regardless of the mechanism of injury. And the Board agrees. As the ALJ noted, regardless of whose version is accepted, claimant sustained a compensable injury.

And while the respondent makes much of the testimony of Amber Griffin, neither the ALJ nor the Board is particularly persuaded. Ms. Griffin appears to have some sort of alternative agenda in this matter and her testimony is, under these facts and circumstances, less than compelling.

Similarly, the Board remains unpersuaded that claimant's previous injury to her left knee precludes her claim in this matter. First, there is absolutely no evidence that claimant

¹ ALJ Order (May 31, 2006) at 5.

has had any ongoing problems to her left knee from that injury up to November 22, 2005. Second, even if she had, she has been diagnosed with a torn anterior cruciate ligament, a condition that clearly constitutes an "aggravation, acceleration or intensification" to that knee. Accordingly, the ALJ's preliminary hearing Order should be affirmed in all respects.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bruce E. Moore dated May 31, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of August, 2006.

BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant
Kathleen N. Wohlgemuth, Attorney for Self-Insured Respondent